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Supreme Court, U.S.
FILED
MAR 11 1999
OFFICE OF THE CLERK

NO. 98-1218

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

Gerald Theodore, Michaud
Petitioner,

vs.

State Farm Mutual Automobile Insurance Company,
Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

REPLY TO BRIEF IN OPPOSITION

Gerald Theodore, Michaud
In Proper Person
P.O. Box 10236
Lahaina, Hawaii 96761
(808) 665-1077

30pp

QUESTIONS PRESENTED

I. WHETHER RESPONDENT STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S ("State Farm") BRIEF IN OPPOSITION'S ("Brief") NEW POINTS RAISED SETTLED - THE FEDERAL COURTS LIMITED JURISDICTION BY ESTABLISHING BOTH SUBJECT MATTER AND PERSONAL JURISDICTION, MURRY V. I.R.S. 923 F.SUPP. 1289 AT 1290 (9)

II. WHETHER PETITIONER'S LAWFUL DISSENT INVALIDATES ANY CONSTITUTIONAL RIGHTS, INTER ALIA, VIZ, ACCESS TO SUBSTANTIAL DUE PROCESS AND JUSTICE

I. THE UNITED STATES SUPREME COURT HAS JURISDICTION.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

II. THE LOWER COURT'S DECISION MIGHT BE CONSIDERED VALID IF, AND ONLY IF, THE DECISIONS FOUND IN APPENDIX "A" ARE INVALID.

The new points presented by State Farm appear to suggest that Petitioner's remedy can be found in those who have elected to turn a blind eye and a deaf ear to Petitioner's lawful complaints, prejudicing Petitioner with unlawful departure from established rules of procedure while pretending such departure is a normal standard of practice. State Farm alleges that its new points raised allows the lower courts to overlook their duties, and allow replacement with arbitrariness over well established boundaries of law. See the September 9, 1996, Plaintiff Gerald T. Michaud's Memorandum in Response to Findings and Recommendation Filed Sept. 3, 1996, (Attachment "A"). The maxim of law, found in Black's Law Dictionary 5th Edition at page 762, declares, "A judge exceeding his office (or jurisdiction) is not to be obeyed."

CONCLUSION

This case presents serious due process issues affecting rules of court that touch a multitude of cases annually adverse to the Citizens of Hawaii. Petitioner respectfully requests this court grant Certiorari to review the issues and governing rules.

Dated: Lahaina, Hawaii, March 10, 1999

Gerald Theodore, Michaud - Petitioner

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APPENDIX A

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

SEP 0 9 1996

at 11 o'clock and ___ min. ___M.
WALTER A. Y. H. CHINN, CLERK

Gerald T. Michaud, Sui juris
C/O P.O. Box 10236
Lahaina, Hawaii 96761
Telephone: (808) 669-0887

Citizen In Party

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Gerald T. Michaud, Citizen In Party Plaintiff, vs. STATE FARM INSURANCE COMPANIES; ROBERT (BOB) YOSHINO; SCOTT A. GILMORE;KAREN PERREIRA; FRANCES YOST; A. DON SMITH; MONIQUE B. CATCOTT; JOHN DOES C. 1-10; JANE DOES 1-10; CORPORATION DOES 1-10; PARTNERSHIP DOES 1-10; GOVERNMENTAL ENTITY DOES 1-10, inclusive, Defendants.	) CIVIL NO. 96 00155 SPK)))) PLAINTIFF Gerald T.) Michaud's MEMORANDUM) IN RESPONSE TO FINDINGS) AND RECOMENDATION) FILED SEPT. 3, 1996,) CERTIFICATE OF SERVICE))))))))JUDGE: SAMUEL P. KING)))INC. CASE NO.96-00155 SPK)

PLAINTIFF Gerald T. Michaud's
MEMORANDUM IN RESPONSE TO FINDINGS
AND RECOMMENDATION FILED SEPT. 3, 1996

I. INTRODUCTION

Plaintiff Gerald T. Michaud hereby submits this Memorandum in Response to the honorable United State's Magistrate Judge FRANCIS I. YAMASHITA'S findings and recommendation filed on September 3, 1996. Said Memorandum is for this court's consideration.

As set forth below, State Farm did not properly remove the instant action, and has failed to prove any such jurisdiction over Plaintiff from the very outset of the above entitled suit. State Farm's negligence per se, is revealed in its prima facie invalid Notice of Removal (hereinafter "Notice"). State Farm's acquiescence, and/or implied assent, would indicate that State Farm can not prove by a preponderance of evidence that the above entitled suit belongs in this Honorable Court. Upon review of the proper parties named on the Complaint, and Notice, said parties would indicate that a problem exists in diversity. The subsequent authorities will make it reasonably clear that State Farm did not serve the required information to reach a proper removal. State Farm's actions are vexatious, wanton, and oppressive.

II. FACTUAL BACKGROUND

On November 7, 1996 Plaintiff filed a Complaint in the Circuit Court of the Second Circuit, county of Maui, State of Hawaii. Said Complaint involves the laws and regulations which govern the no-fault

business of insurance, in, and for the State of Hawaii. Said laws challenge this Honorable Court's jurisdiction.

On February 15, 1996 State Farm et al, filed a prima facie invalid Notice. Please review the original Complaint, and/or Notice. Neither of which fulfill citizenship declarations as required by law, nor does either suggest that "original jurisdiction" belongs in the above entitled Court. There remains several non-diverse proper parties on the face of said suit. State Farm, on May 13, 1996, successfully mislead the Hawaii State Supreme Court into joining same into dismissing Plaintiff's appeal of action, by quoting the authority of LIBHART v. SANTA MONICA DAIRY CO., 592 F. 2d 1062 (9th Cir. 1979). See page 3 of Exhibit "E" of Defendant's Scheduling Conference Statement. What State Farm failed to mention to the Supreme Court, and to the above entitled Court for that matter, is that in the Libhart supra, paragraph [5] at pages 1063, and 1065, statement that: "...Removal is accomplished merely by a defendant filing a verified petition..." Please Note however that both State and Federal Court have overlooked the fact that State Farm wants a lawful verification, inter alia, in the above entitled action. (Emphasis throughout this Memorandum is Plaintiff's unless otherwise so stated).

Plaintiff found that the very first removal filings, in the united States, were recognized and termed, "Petition (s) for Removal." These petitions were revised (in title only) in 1988. The congressional intention was one of making the pleading on removal grounds simpler.

Plaintiff finds that this simplicity has also invited chicanery such as in this matter. Wright, Miller & Cooper, Federal Practice and Procedure, referring to David D. Siegel's Commentary on the 1988 Revision of Section 1446 of title 28 where Siegel stated that: "...no change of substance is intended and that the gist of what the new "notice" has to include is in any event no greater than what the old "petition" had to include," with the noted exception of a bond. Therefore, the points of contention with Plaintiff begin with, but are not limited to:

1. State Farm's Notice is invalid in that it does not conform properly to the rudimentary requirements found in either 29 Fed Proc, L Ed. page 554 § 69:61 below. 29 Fed Proc, L Ed § 69:61 Checklist of Removal Documents:

a. Cover page listing the documents attached;
b. Notice of filing removal petition and bond;
c. Verified petition for removal;
d. Copies of all process, pleadings, exhibits, appendices, orders, and summonses served in state action upon removing party;
e. A removal bond and power of attorney for person signing for the surety corporation;
f. Certificate of service of removal documents.

State Farm's Notice does not appear to harmonize with either 14 Federal Forms page 554 § 58:21, or with Vol. 2 West's Federal Forms § 1102. Plaintiff therefore contends that State Farm's Notice of Removal wants:

a. A cover page. This would conveniently describe the propriety of its contents;

b. A bond. This has now been replaced with the money sanction, which according to David D. Siegel's Commentary, is to be as potent a threat as the bond was, and possibly even greater.

c. A verification. See 29 Fed Proc, L Ed § 69:65 Verification. "What constitutes proper verification is a matter of federal law, state law requirements being inapplicable to removal petitions." See Title 28 § 1746 (1). A federally accepted sworn verification would have contained a statement such as; "I verify under penalty of perjury under the laws of the State of Hawaii that the following/above is true and correct..." State Farm's Notice contains a color of verification, but not a federally accepted one, and therefore attorney Douglas K. Ushijima's signed verification is invalid, and would thereby fail to meet the federal law requirements due to its notarization; "A court rule requiring that verification be notarized does not apply to verifications..." Bokum Resources Corp., D.C.N.M. 1982, 26 B.R. 615. Also See 29 Fed Proc, L Ed Supp §§ 69:60; "...If a petition conforming to the statutory requirements is filed a court must accept removal. On the other hand...by failing to file the "required" petition waive that right..." Whereas § 69:65 states; "Petitions for removal must be verified..." See Libhart, supra at 1063 [4], where it was said that; "Removal statutes are strictly construed against removal. 28 U.S.C.A. § 1446...Removal...is accomplished by defendant's filing verified petition..." It was also stated in the case of HERBERT v. ROXANA PETROLEUM CORPORATION, 12 F. 2d 81, that:

"Verification" is confirmation of correctness, truth, or authenticity of pleading...Under Judicial Code, § 29 (Comp. St. § 1011), requiring petitions for removal to be verified, petition verified before notary public of another state without proof of authority was not duly verified, and motion to remove was rightfully denied. Page 83...there was not submitted to said court a petition duly verified. In the absence of such proof of verification, the court "had no valid petition for removal" before it, and therefore rightfully denied the motion to remove..."

d. Copies of all pleadings. State Farm is missing, but not limited to: "Defendants Motion to Dismiss" filed January 17, 1996; "Plaintiffs' Response to Motion to Dismiss" filed January 30, 1996; "Defendants Reply Memorandum" filed February 12, 1996; "Plaintiffs' Motion for Stay" filed February 15, 1996; "Plaintiffs' Motion to Intervene" filed February 21, 1996; "Plaintiffs' Motion for Ruling" filed March 5, 1996; "Defendants' Memorandum in Opposition to Intervene, Stay, and Ruling" filed March 18, 1996. See 28 USCS § 1446 (a) for notice to contain all process, and pleadings, etc.. See Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3733. Without such pleading, the above entitled Court could not possibly realign parties properly. See AYNESWORTH v. BEECH AIRCRAFT CORP., 604 F. Supp. 630 (1985), at 633, A. Realignment. The Aynesworth decision was; "Before determining removability...on the basis of diversity of citizenship, the Court will realign the parties according to their true interest, as it would were the case brought into federal court originally. Heniford v. American Motors Sales, Corp., supra at 328."

2. Plaintiff contends that State Farm's Removal is invalid in that it was negligent to a portion of the "checklist of contents for a petition" found in 29 Fed Proc, L Ed § 69:68:

- Statement specifying the statute(s) which confer jurisdiction upon District Court
- State of facts supporting jurisdiction
- Date of receipt of initial pleading...
- Statement that removal is timely under ...1446(b)
- Statement that petition is accompanied by a bond conditioned as required by law
- Statement that ...defendants...joined in removal petition
- Specific allegations of fraudulent joinder or fraudulent amount...

a. Plaintiff contends that State Farm's Notice of Removal, inter alia, is invalid, and fails for want of a statement that removal is timely under 28 USCS § 1446(b). See POULOS v. NAAS FOODS, INC., 959 F.2d 69 at 71 (1992), where the court held; "There are two ways for a diversity suit to wind up in federal court. A plaintiff may bring an action to federal court directly, or a defendant may remove a case to federal court from state court within 30 days of its inception." Also see EASLEY v. PETTIBONE MICHIGAN CORP., 990 F.2d 905 (1993), stating that; "...only if the petition for removal was filed within 30 days of service of the complaint and if there was diversity of citizenship at the critical time. Under section 1441 (b), diversity of citizenship must exist as to a party both at the time the state action is commenced and at the time the defendant files the petition for removal. Kinney v. Columbia Savings & Loan Association,

191 U.S. 78, 81, 24 S.Ct. 30, 31, 48 L. Ed. 103 (1903); Kanzelberger v. Kanzelberger, 782 F.2d 774, 776 (1986) (citing 14A Wright, Miller & Cooper, Federal Practice and Procedure § 3723, at pp. 312-14 (2d ed. 1985)." Also see Aynesworth supra at 631 [1], and 633 [1, 2], where it was said: "...diversity must exist both at the time the original action is filed in state court and at the time removal is sought..." Neither condition existed in the above entitled matter. Whereas the CONTINENTAL OIL COMPANY v. PPG INDUSTRIES, INC., 355 F. Supp. 1183 (1973), at 1185 said; "If the case stated by the initial pleading is not removable, a petition for removal may be filed within twenty days after receipt by the defendant, through service...of a...motion...from which it may first be ascertained that the case is one which is or has become removable." State Farm did not perform either prerequisite, except perhaps under some color of law, nor has the state or federal court applied either of these questions of law to the instant matter.

b. State Farm's Notice of Removal is invalid, and fails for want of a statement that the defendants joined in the Removal Notice. Affidavits are required from the remaining proper party Defendants stating that they joined in the notice for removal. See 29 Fed Proc, L Ed § 69:69; where it is said that, "...Where any of the defendants fails either to join in the petition...the petition which has been filed will be insufficient on its face to perfect removal..." Also see, GETTY OIL CORP., DIV. OF TEXACO, INC. v. INSURANCE CO. OF NORTH AMERICA, 841 F.2d (1988), and

MECHANICAL RUBBER & SUPPLY CO. v. AMERICAN SAW & MFG. CO., 810 F. Supp. 986 (1990) for cases involving multiple defendants who are given a 30 day period for joining petition for removal such as in this instant matter.

c. State Farm's Removal is invalid in that it misrepresents the term "fraudulently joined defendants." At paragraph 10 of State Farm's Removal it declares that; " the Removal concerns "a diversity of citizenship" due to Plaintiff's fraudulently joined defendants." See 29 Fed Proc, L Ed. § 58:106, and Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3741 for a discussion of the effect of post-removal joinder of a non-diverse party under 28 USCS § 1447(e). Concerning pre-joined defendants See 29 Fed Proc, L Ed. § 58:9 at; "If claims against a non-diverse defendant are dismissed involuntarily-that is without the plaintiff's consent-removal on the basis of diversity is improper." Also see Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3723. State Farm has not proven the fact that Plaintiff fraudulently joined the proper party Defendants in order to avoid this Honorable Court's jurisdiction. Please see LANE v. CHAMPION INTERNATIONAL CORP., 827 F. Supp. 701 (1993), where the court held that joinder of a defendant is not fraudulent simply because the motive is to defeat diversity, if the plaintiffs' allegations set forth a good-faith claim under state law, no matter how doubtful. This point to be elaborated on later in the discussion section of this memorandum by quoting authorities

such as COUGHLIN V. NATIONWIDE MUT. INS. CO., 776 F.Supp. 626 (1991).

3. State Farm's Removal is invalid prima facie for it is ambiguous in that it does not conform to either; (a) 14 Federal Forms page 554, § 58:21, or (b) § 1102 of Vol. 2 West's Federal Forms--3. There is a presumption in State Farm's Notice. In its opening statement there is a persuasion that would lead one into believing that the removal is based entirely on a federal question of law rather than a diversity of citizenship. It merely asserts that it was made pursuant to Title 28 §§ 1441 & 1446, with no mention of § 1332 until paragraph 10. See Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3723.

4. State Farm's Removal is invalid although it is properly titled (under color of office), "Notice of Removal." The 1988 revision of Section 1446 would forewarn most into concluding that a correct declaration would be found somewhere within its contents (preferably in its title) a statement that would establish the fact that the "Notice of Removal" is Signed under Rule 11, and is made in Substitution for a "Verified Petition," or to at least state that the "Notice of Removal is signed pursuant to Rule 11." State Farm's alleged Notice of Removal does not state that it was signed pursuant to the Federal Rules of Civil Procedure, Rule 11 requirement. See Title 28 § 1446 (a). This Rule 11 prerequisite was obviously overlooked by both state, and federal Court's. See Plaintiff's March 8, 1996 Response to Defendants' Notice of Removal at paragraph 7,

and also see Aynesworth supra at 637 [10], "...removal in compliance with F.R.C.P. 11..."

5. State Farm's Removal is invalid in that it did not describe its diverse citizenship status properly. State Farm would be considered by law to be a national citizen, as is Plaintiff, both of which belong to the same political community. "For purposes of removal on diversity grounds, corporations are citizens both of the states of their incorporation and the states of their principal places of business. Thus, a multistate corporation incorporated in the forum may not remove a suit brought against it in a state court to a federal court on diversity grounds." See 29 Fed Proc, L Ed. § 69:26 Corporations. Also see Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3724.

6. State Farm's Removal is invalid in that it fails to meet the diversity question found at 29 Fed Proc, L Ed § 69:64. "...it is necessary to allege that diversity of citizenship existed both at the time of the lawsuit's commencement and the time of the removal petition." See Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3723.

7. State Farm's Removal is invalid in that it fails to meet the plain statement of jurisdiction. See 29 Fed Proc, L Ed § 69:62; "removal is not necessarily exempt from the requirement of a short and plain statement of jurisdiction..." See the Appendix of forms in the Rules of Civil Procedure pg. 499-500, Form 2. Allegation of Jurisdiction, amended Dec. 1, 1993.

8. State Farm's Removal is invalid in that it acquiesced to Plaintiff's following questions which would resolve most jurisdictional questions, and/or issues that would involve the above entitled Court. State Farm has made no visible attempt to severally address any of the pointed questions stated in Plaintiff's Response to Order to Show Cause, nor the Demand for Proof of Jurisdiction, which Plaintiff fairly demanded:

a. Reasonable identification of the proper person (s) executing the removal;

b. The instrument or agreement that Plaintiff voluntarily removed Defendants as proper parties from Complaint in order to accomplish removal;

c. The law that would allow State Farm, ex parte, the power to remove a case from state court to federal district court;

d. The verification that the removal was signed pursuant to F.R.C.P 11;

e. The Implementing Regulations for Title 28 §§ 1332, 1441 & 1446 as required by UNITED STATES v. MERSKY et al., 361 US 431 at 438, and is sanctioned by the decision found in US v. MASON, 412 US 391 (1973), and

f. A response to the questions at law found on pages 4 through 6 of Plaintiff's Memorandum to Order to Show Cause.

9. State Farm's Removal is invalid in that it fails to admit that the controversy is a joint altercation between Plaintiff and the above entitled proper parties.

10. State Farm's Removal is invalid in that it fails to admit that the issues only pertain to matters of the State. Said matters are those which govern the legal process of conducting proper cancellation procedures in the business of insurance, as well as bad faith actions concerning Hawaii no-fault policies of insurance.

11. State Farm's Removal is invalid in the fact that by law the United States District Courts are courts of limited Jurisdiction involving diversity suits.

III. DISCUSSION

A. Complete Diversity of Citizenship Does Not and Did Not Exist From The Outset

1. STRAWBRIDGE et al. v. CURTISS et al, Book 7, 3 Cranch

Jurisdiction in regards to citizens of different states was first submitted for consideration in this Honorable Court for which Marshall, Ch. J., delivered the opinion of the court. The decision:

> "That the jurisdiction cannot be supported." Because, "The court understands these expressions to mean, that each distinct interest should be represented by persons, all of whom are entitled to sue, or may be sued, in the federal courts. That is, that where the interest is joint, each of the persons concerned in that interest must be competent to sue, or liable to be sued, in those courts."

Marshall also stated in the New Orleans v. Winter, 1 Wheat 91, that: "In the case of Strawbridge v. Curtiss, it was decided, that where a joint interest is prosecuted, the jurisdiction cannot be sustained, unless each individual be entitled to claim that jurisdiction." It was also said that: "The action is brought jointly, not each claiming his several part; and the court cannot disconnect the parties..." In the LOUISVILLE, &c., RAILROAD. v. IDE, 114 U.S. 55, at pg. 56, it was said: "A defendant has no right to say that an action shall be several which a plaintiff elects to make joint. Smith v. Rines, 2 Sumner, 348. A separate defense may defeat a joint recovery, but it cannot deprive a plaintiff of his right to prosecute his own suit to final determination in his own way (no Admirality or Maritime jurisdiction allowed). The cause of action is the subject matter of the controversy, and that is for all the purposes of the suit whatever the plaintiff declares it to be in his pleadings. Here it is certain joint contracts entered into by all the defendants...On the one side of the controversy upon that cause of action is the plaintiff, and on the other all the defendants. The separate defenses of the defendants relate only to their respective interests in the one controversy. The controversy is the case, and the case is not divisible..." Plaintiff's insurance policy is also a joint agreement between Plaintiff, State Farm, and

the Hawaii State Insurance Commission. The aforesaid policy would indicate a joint contract. Said contract pertains to a three party specific performance agreement. Said performances are to be accomplished by both Plaintiff, and the proper party Defendants, who are each governed by certain Rules established by the Hawaii State Insurance Commission.

B. Citizenship Is Not Established In Either The Complaint Or Notice Of Removal

1. Title 28 U.S.C.A. § 1441 Does Apply

Citizenship was neither established in the Complaint nor in the Notice of Removal, therefore State Farm does not fulfill the proper citizenship requirement. See ATLANTA SHIPPING CORP. v. INTERNATIONAL MODULAR HOUSING INC., 547 F.Supp. 1356, stating that: "...diversity must exist both at time of filing in state court and at time of removal." The Complaint alleges that the Plaintiff is a resident of Hawaii, and that State Farm is an Illinois corporation authorized to, and doing business in the State of Hawaii, and the Notice of Removal alleges that State Farm is a company organized and existing under the laws of the State of Illinois. In quoting the case of, KERSTETTER v. OHIO CAS. INS. CO., 496 F. Supp. 1305, at 1305 [2], and 1307 [2] (1980) in reference to 28 U.S.C.A. § 1441, it was said:

> "When defendant seeks to remove an action to federal court on the basis that the parties are of diverse citizenship, diversity of citizenship must be shown to have existed at the time of commencement of action in state court and at

> the time of filing of petition for removal. Unanue v. Caribbean Canneries, inc., 323 F. Supp. 63 (1971); Garza v. Midland National Insurance Co., 256 F. Supp. 12 (1966); Carlton Properties, Inc. v. Crescent City Leasing Corp., 212 F. Supp. 370 (1962); 1A Moore's Federal Practice 0.161[1], at 207 (2d 1979). In this action, neither of these criteria has been satisfied" (This is also true with State Farm).

It was also said in the Kerstetter case, supra at 1307 [3], that; "...neither the complaint nor the petition for removal properly pleads diversity in this action..." In the case of KELLAM v. KEITH, 144 U.S. 568, speaking on the authority of Stevens v. Nichols, 130 U.S. 230 et al, where the controversy is wholly between citizens of different States, and where the petition and bond were provided, the action was remanded because the complaint did not disclose the citizenship of the parties. Such as in this instant matter. The Stevens case, ibid., stated that "if it does not appear in the record that such diversity also existed at the commencement of the action, the cause will be remanded." See CODITRON CORP. v. AFA PROTECTIVE SYSTEMS, INC., 392 F. Supp. 158, at 159 [10] (1975) referring to 28 U.S.C.A. § 1447(c), where it was said that; "Removability is to be determined from the face of the complaint at the time of removal." In the decision found in CUDNEY v. MIDCONTINENT AIRLINES INC., 98 F. Supp. 403, it was declared that; "...removal refused when the resident defendant had been dropped by the court on the merits..." Plaintiff's Complaint does not disclose citizenship of either party, nor were these conditions properly resolved by state or federal court."

C. Diversity of Citizenship Is Not Based On Residence or Principal Place of Business

State Farm has asserted in its Notice of Removal that its principal place of business is in Bloomington, Illinois, and that Plaintiff is a citizen of the State of Hawaii. State Farm's averment in its Notice of Removal is contrary to the Record, and what the Complaint actually reads is in regards to residence of Plaintiff. The Complaint discloses Plaintiff's alleged residence only, not citizenship. The Kerstetter case supra at pages 1306-1307 par. 3 & 5, addresses both of these issues in that it is of the opinion that; "For purposes of establishing diversity jurisdiction, allegations of residence are not synonymous with citizenship." Raymond J. Broderick held that: "defendant's removal petition did not establish diversity of citizenship, since allegations in petition of plaintiff's residence were not sufficient to establish plaintiff's citizenship. These allegations of residence are not sufficient because, for the purpose of establishing diversity, residence is not synonymous with citizenship." Whitelock v. Leatherman, 460 F. 2d 507 (1972); Luehrs v. Utah Home Fire Insurance Co., 450 F. 2d 452 (9th Cir. 1971); Freedman v. Zurich Insurance Co., 264 F. Supp. 550 (1967). Concerning the Kerstetter supra, court's decision over a principal place of business, they say that a defendant has not carried its burden of proving that removal is proper if the principal place of business of the defendant is not alleged in the complaint. What Kerstetter supra said at [4]; "an allegation of a corporation's principal place of business is necessary,

and a principal office is not synonymous with a principal place of business. Uniroyal, Inc. v. Heller, 65 F.R.D. 83 (1974); Gavin v. Read Corp., 356 F. Supp. 483 (1973); Carlton, supra; Washington East Washington Joint Authority v. Roberts and Schaefer Co., 180 F. Supp. 15 (1960). The principal place of business of the defendant is not alleged in the complaint. Moreover, the allegations in the petition for removal are in the present tense and do not properly allege the existence of diversity at the time the complaint was filed in state court. Garza v. Midland National Insurance Co., 256 F. Supp. 12 (1966); Matteson v. Bressette, 250 F. Supp. 646 (1966)."

Plaintiff contends that State Farm did not testify properly in its Notice, that the location from which it engages in the sales, and the writing of contracts in the State of Hawaii, is strictly performed out of Bloomington, Illinois, and that their principal place of business for the aforementioned writings in the State of Hawaii is especially located and performed in Bloomington, Illinois.

In order to remain within the congressional intent of title 28 § 1332, we the people of the united States, comprising the 50 united States of America, are a federation of individuals and states which are commonly joined by compact, and/or union. We collectively have no diversity in citizenship. See CABALCETA v. STANDARD FRUIT CO., 883 F.2d 1553 at 1557 (1989), quoting Strawbridge, supra, 2 L.Ed. 435 (1806); "This rule requires that all plaintiffs and all defendants must be of different

citizenship's." In agreement with the aforesaid decisions is Poulos supra at 71 who also quotes Strawbridge, supra; "(now 28 U.S.C. § 1332) applied only to cases in which no party shared common citizenship with any party on the other side of the dispute." State Farm and Plaintiff are of a common citizenship as are the proper party Defendants.

D. Improperly Joined, Or Fraudulently Joined Defendants Not Substantiated

State Farm claims that an issue arose in the fact that Plaintiff improperly joined, or fraudulently joined certain defendants in suit. State Farm also claimed in its "Statement Contesting Jurisdiction" filed in the Hawaii State Supreme Court on May 13, 1996, and stated at page 4 of same that; "the order appealed from is not a final appealable order; no final judgment was entered...The Order, thus, did not dismiss all claims against all parties, nor did it enter judgment in favor of or against any party...Jenkins v. Cades Schutte Fleming & Wright, 76 Haw. 115, 117-18, 869 P. 2d 1334, 1336-37 (1994)..." Plaintiff contends that in the case of Stone v. Foster, 163 F. Supp. 298 (1958), it was determined that "...defendant whose presence destroys removal must be taken completely out of the case." Although Continental Oil Co., supra at 1183 said; "Dismissal of a defendant can change a case which has been filed in state court and which is otherwise nonremovable to federal court to a removable one only if dismissal of the defendant was a voluntary dismissal rather than an involuntary dismissal that might be overturned on appeal to a higher

state court...Denial by state Supreme Court of plaintiff's application...against severance from state court action of one defendant was not tantamount to an adjudication of motion for severance; thus, severance of that defendant was analogous to an involuntary dismissal and did not change case, which was otherwise not removable, into one which could be removed to federal court based upon diversity jurisdiction...state law might impose liability on the additional defendants on the facts involved." See the Weems doctrine at WEEMS v. LOUIS DREYFUS CORP., 380 F.2d 545 (1967), respecting the voluntary-involuntary rule. State Farm in its "Statement Contesting Jurisdiction" would appear to agree with this rule whole-heartedly.

Accordingly, the proper parties known as State Farm Defendants ROBERT (BOB) YOSHINO; SCOTT A. GILMORE; KAREN PERREIRA; FRANCES YOST; A. DON SMITH, and MONIQUE CATCOTT are still Defendants in this instant suit for they have not been taken completely out of the case, and will not be taken out until such time as to when they can prove to a JURY that their procedural actions were done in good faith. State Farm contradicts all that it has previously plead, and now fearlessly aver to the above entitled court that these same certain aforementioned Defendants were completely dismissed from the original complaint, yet they remain on their Notice of Removal. State Farm wants any form of consistency. The record indicates (which this Court is in need of) that the dismissal of the above mentioned Defendants

took place out of law, by/through the action of the State Court who arbitrarily disregarded the Rules of court, which require defendants to submit affidavits in order to establish their severability from the case. This Honorable Court was not provided a copy of the Motion to Dismiss the above entitled Defendants, and therefore must look elsewhere for a decision in guidance concerning this instant matter. Please see BOLLING v. UNION NAT. LIFE INS. CO., 900 F. Supp. 400 (1995) where it said that:

> "Where party alleges fraudulent joinder, that party bears burden of proving its allegations and must do so by clear and convincing evidence; although court properly looks to complaint itself to determine whether there has been fraudulent joinder, court may resort to additional submissions such as deposition testimony and affidavits in making determination; all allegations and submissions must be viewed in light most favorable to plaintiff. 28 U.S.C.A. § 1332.

In this instant matter State Farm did not submit all of the pleading. The Second Circuit Court did not look to the complaint, and disregarded the Rule governing affidavits altogether. Not to mention the fact that the Complaint named Governmental Entity Does, which would indicate an implied defendant(s) representing the State of Hawaii Insurance Commission. It was also said in the Bolling case, supra, at page 400 that; "Federal courts are courts of limited jurisdiction..." and, at page 406 [8], that: "There are two tests that a court uses to determine whether a party has been fraudulently joined..." See Cabalceta v. Standard Fruit Co., supra, at 12 page 1554, and [1. 2] page 1555. Whereas the LAUGHLIN v. PRUDENTIAL INS. CO., 882 F. 2d 187 (1989) cite would clarify the

joinder issue within this instant matter in that; "both principal and agent may be held accountable..." and "...is controlled by allegations of plaintiff's complaint. 28 U.S.C.A. § 1441 (c)...An agent receives no shield from the fact that she is an agent or because her principal is also liable for the tort. An agent who uses the legal process in an illegal manner incurs the same liability as she would have incurred had she employed it in her own behalf, 1 Am. Jur. 2d, Abuse of Process, Section 19, see Allen v. Ritter, 235 So. 2d 253 (1970); State Use of Richardson v. Edgeworth, 214 So. 2d 579 (1968), and both principal and agent may be held accountable...The removing party must show...that there has been outright fraud in the plaintiff's pleadings of jurisdictional facts...the removing party has burden of proving the fraud...this court must evaluate all of the factual allegations in the light most favorable to the plaintiff, resolving all contested issues of substantive fact in favor of the plaintiff. B., Inc. v. Miller Brewing Co., 663 F. 2d 545 (1981), Bobby Jones Garden Apartments v. Suleski, 391 F. 2d 172 (1968). In addition, any uncertainties in controlling substantive law must be resolved in favor of the plaintiff. Id." This Court wants the aforesaid Motion pleading which would enable it to determine Defendants standing. Plaintiff's Complaint raises the issues of unlawful process, and bad faith in regards to the proper party Defendants. The Laughlin case, supra, [7] at 191 covers the fact that individuals engaged in the business of insurance process are only protected in good faith conduct, and provides no such immunity against liability for abuse of process, and "where there is a single

wrong to plaintiff, for which relief is sought, arising from an interlocked series of transactions, there is no separate and independent claim or cause of action under § 1441 (c)." American Fire & Casualty v. Finn, 341 U.S. 6, 14, 71 S. Ct. 534, 540, 95 L. Ed. 702, 708 (1951); Moore v. United Service Auto. Ass'n, 819 F. 2d 101 (1987)." The COUGHLIN V. NATIONWIDE MUT. INS. CO., 776 F.Supp. 626 (1991), at 628 [4. 5] said; "In determining whether the plaintiffs fraudulently joined the resident defendant, the Court must examine the complaint as it existed when the petition for removal was filed. Ching v. Mitre Corp., 921 F. 2d 11, 13 (1990)." Plaintiff's Complaint in this instant matter is centered around abuse of process in reference to Hawaii State Regulations pertaining to cancellation procedures, and as in the Laughlin example, supra, fraudulent joinder had not been established, and the case was improvidently removed because the district court lacked jurisdiction as in this instant matter.

E. The United States District Court Is Of Limited, And Not Broad Jurisdiction

It was said in the Bolling case supra, at page 400, "federal courts are courts of limited jurisdiction." Also See Libhart case supra, at 1064, in that federal law determines removal jurisdiction which is strictly construed against removal, quoting Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 61 S. Ct. 868, 85 L. Ed. 12114 (1941); 14 Wright, Miller and Cooper, Federal Practice and Procedure, 3721, pp. 533-37. The

decision claiming; "...An example of our strict construction of our jurisdictional statutes is the complete diversity rule of Strawbridge v. Curtiss..." This rule is also found in the Poulos case supra, at page 71.

F. State Farm is not a citizen who can claim diversity status

Because State Farm is recognized in most, if not in all 50 states of the union, it is held that; "A two-pronged test is employed analyzing statutory authorization and actual scope of activities. If both extend beyond one state, the corporation is a national citizen, ineligible for diversity." LITTLE LEAGUE BASEBALL v. WELSH PUB. GROUP INC., 874 F. Supp. 648 (1995).

It being a settled fact that Under the Fourteenth Amendment of the United States Constitution, State Farm has consequently become a national citizen, and therefore is not subject to diversity-based removal.

G. State Farm Has Not Overcome The Jurisdictional Issue

1. McNUTT v. GENERAL MOTORS ACCEPTANCE CORP., 298 U.S. 178, "...the court may insist that the jurisdictional facts be established by a preponderance of evidence or the case be dismissed. Pp. 182, and 189. P. 182. ..It is incumbent...to allege the jurisdictional facts, according to the nature of the case. Where the law gives no rule, the demand of the plaintiff must furnish one; but where the law gives the rule, the legal cause of action, and not the plaintiff's demand, must be regarded." Wilson v. Daniel, 3 Dall. 401, 407, 408;

Barry v. Edmunds, 116 U.S. 550, 560; Vance v. Vandercook Co. (No. 2), 170 U.S. 468, 481; P. 183 ...where the jurisdictional issue was thus raised, the burden of proof was upon the defendant. P. 189 ...The prerequisites to the exercise of jurisdiction are specifically defined and the plain import of the statute is that the District Court is vested with authority to inquire at any time whether these conditions have been met. They are conditions which must be met by the party who seeks the exercise of jurisdiction in his favor. He must allege in his pleading the facts essential to show jurisdiction. If he fails to make the necessary allegations he has no standing. If he does make them, an inquiry into the existence of jurisdiction is obviously for the purpose of determining whether the facts support his allegations...The authority which the statute vests in the court to enforce the limitations of its jurisdiction precludes the idea that jurisdiction may be maintained by mere averment or that the party asserting jurisdiction may be relieved of his burden by any formal procedure. If his allegations of jurisdictional facts are challenged by his adversary in any appropriate manner, he must support them by competent proof. And where they are not so challenged the court may still insist that the jurisdictional facts be established or the case be dismissed, and for that purpose the court may demand that the party alleging jurisdiction justify his allegations by a preponderance of evidence. We think that only in this way may the practice of the District Courts be harmonized with the true intent of the statute

which clothes them with adequate authority and imposes upon them a correlative duty."

2. CODITRON CORP. v. AFA PROTECTIVE SYSTEMS, INC., 392 F. Supp. 158 (1975). "As a general rule, if plaintiff has a remedy under both state and federal law, it may base its claim solely on state law and thus defeat defendant's potential right to removal, if diversity of citizenship is lacking...Removability is to be determined from the face of the complaint at the time of removal. 28 U.S.C.A. § 1447 (c)"

H. The United States District Court Has Discretionary Power

Plaintiff contends that this Honorable Court possess the power to exercise the doctrine of "Forum Non Conveniens," referring to the discretionary power of a court to decline jurisdiction when convenience of parties and ends of justice would be better served if action were brought and tried in another forum. See Cabalceta case supra, at 1555, and 1556. Plaintiff has objected to State Farm's fraudulent removal from the outset. See, On Remand: 29 Fed Proc, L Ed Supp § 69:112. "Required when case removed improvidently ("rendered without adequate consideration by the court, or without proper information as to all the circumstances affecting it, or based upon a mistaken assumption or misleading information or advice." Black's Law Dict.) and without jurisdiction. 28 USCS §1447 (c) directs the Federal District Court to remand that case to the state court...The plaintiff's objection to a petition for removal is properly treated as a motion to remand. Pangrazzi v. United States 551 F Supp 648 (1981) Plaintiff has

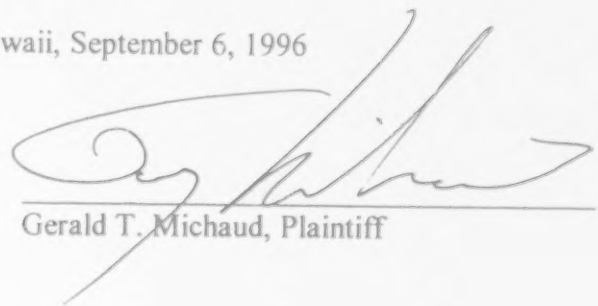
objected from the out set, therefore once more for the record, Plaintiff again objects to State Farm's fraudulent removal with this honorable court's sanctioned approval.

IV. CONCLUSION

In light of the preponderance of evidence submitted by Plaintiff in connection with: 1. Improper form of Defendant's Notice; 2. No proper cover page; 3. Incomplete pleadings; 4. No verification; 5. No statement that removal is timely; 6. No signature pursuant to F.R.C.P. 11; 7. No factual evidence that Defendants were fraudulently joined; 8. No diversity of citizenship between State Farm and Plaintiff; 9. No diversity existing at the time of the lawsuits commencement; 10. No proper jurisdictional statement; 11. No identification of person(s) executing Removal; 12. No visual agreement that Plaintiff voluntarily removed Defendants from the Complaint; 13. No reference made to the Implementing Regulations for title 28 §§ 1332, 1441, and 1446; 14. No jurisdiction due to District Courts limitations; 15. No severalbility in this instant case for controversy is joint; 16. No realignment of proper parties; 17. No established citizenship in Complaint or Notice of Removal ; 18. No response to Plaintiff's response concerning 28 U.S.C. § 1332(d); 19. No properly established residence's, or principal place of business; 20. No immunity to agents; 21. No justification for improvidently removed cases, and 22. No power over State Law jurisdiction.

Plaintiff therefore respectfully submits that federal jurisdiction has never existed in the above entitled case, except for the now raised federal question concerning Defendant's obstruction of Plaintiff's VII Amendment United States Constitutional Right.

DATED: Lahaina, Hawaii, September 6, 1996



Gerald T. Michaud, Plaintiff